

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TIMOTHY HINCKLEY and JUNE HINCKLEY,

Plaintiffs,

-against-

WESTCHESTER RUBBISH, INC. and
TOWN OF LEWISBORO,

Defendants.
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ORDER WITHDRAWING
REPORT AND
RECOMMENDATION

04 Civ. 0189 (SCR) (GAY)

On December 19, 2005, Judge Stephen C. Robinson entered a partial default judgment against defendant Westchester Rubbish, Inc. On December 20, 2005, Judge Robinson referred this matter to the undersigned to report and recommend the amount of damages to be awarded plaintiff against Westchester Rubbish, Inc.

Upon preliminary inspection of the default papers, it appeared to the undersigned that the record was devoid of proof that plaintiffs served defendant Westchester Rubbish, Inc. with a copy of plaintiff's Request to Enter Partial Default As Against Westchester Rubbish, Inc. (Docket #12). Thus, by Order dated January 3, 2006, the undersigned directed plaintiffs to submit said proof of service *to the Chambers of the undersigned* no later than January 13, 2006.

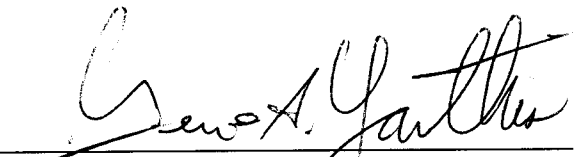
Plaintiffs failed to provide said proof of service as directed. Accordingly, by Report and Recommendation dated January 25, 2006, I recommended to Judge Robinson that the partial default judgment entered against defendant Westchester Rubbish, Inc. should be vacated.

However, it now appears that plaintiff indeed *filed* said proof of service on January 19, 2006, albeit awkwardly, in that it was attached to plaintiff's Memorandum of Law in conjunction with a summary judgment motion that is pending before Judge Robinson and not the undersigned. Accordingly, **the Report and Recommendation dated January 25, 2006 is WITHDRAWN.**

Further, it is hereby **ORDERED** that all parties submit to this Court any supporting documents and/or memoranda that will assist the Court in determining the amount of damages to be awarded to the plaintiff based on the default of defendant Westchester Rubbish, Inc. The papers shall be filed with the Clerk of the Court, with a courtesy copy to the Chambers of the undersigned, on or before March 1, 2006. Upon receipt of said documents, the Court will either schedule a hearing or issue a Report and Recommendation.

Dated: January 31, 2006
White Plains, New York

SO ORDERED:



GEORGE A. YANTHIS, U.S.M.J.